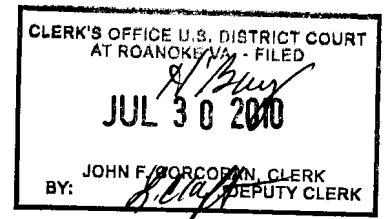


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION



KENNETH S. AUSTIN,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

Civil Action No. 5:09CV00103

MEMORANDUM OPINION

By: Hon. Glen E. Conrad
Chief United States District Judge

By memorandum opinion and order entered June 25, 2010, this court reversed the final decision of the Commissioner of Social Security denying plaintiff's claim for supplemental security income benefits under the Social Security Act, as amended, 42 U.S.C. § 1381 et seq. The Commissioner has now filed a Motion to Alter or Amend Judgment Pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, seeking relief from the court's judgment. Having considered the arguments advanced in support of the Commissioner's motion, the court concludes that the motion must be denied.

The Commissioner once again argues that the opinion of the Administrative Law Judge, which was adopted as the final decision of the Commissioner, is supported by substantial evidence. For reasons adequately stated in the court's memorandum opinion, the court is unable to agree. Stated succinctly, the court again concludes that the Law Judge erred in rejecting the findings and opinions of a psychiatrist who has actually examined and treated the plaintiff over a period of time, in favor of the findings and opinions of a psychologist who had never seen or examined the plaintiff. Under the court's reading of the governing administrative regulations, greater weight is to be given to the medical findings and opinions of physicians who have actually examined and treated the claimant.

See 20 C.F.R. § 416.927(d). Moreover, greater weight is to be accorded to the opinion of a specialist about medical issues related to that area of specialty. See 20 C.F.R. § 404.1527(d)(5). In the instant case, the Law Judge rejected the opinion of a treating medical specialist, in favor of a nonexamining source who is not even a physician. Moreover, for reasons stated in the court's memorandum opinion, the court concludes that the findings and opinions of the treating psychiatrist are consistent with his clinical observations as well as the overall circumstances of plaintiff's case. The court again notes that, if the Commissioner believed that the findings and opinions of the treating psychiatrist were in some way deficient, the Commissioner had full authority to require plaintiff to submit to another examination by a consultative psychiatrist. See 20 C.F.R. §§ 416.917 and 416.918. As noted by the court in its memorandum opinion, as it now stands, the psychiatric evidence supporting plaintiff's claim of disability is undisputed by any examining or treating source.

For these reasons, which are stated in more detail in the court's memorandum opinion, the court concludes that the defendant's motion for relief from judgment is without merit. An order denying the motion shall be entered this day.

The Clerk is directed to send certified copies of this opinion to all counsel of record.

DATED: This 30th day of July, 2010.

Chief United States District Judge